If Judge Gorsuch fails to reach 60 votes, it will not be because Democrats are being obstructionists, it will be because he failed to convince 60 Senators that he belongs on the Supreme Court.

My friend the majority leader made the decision to break 230 years of Senate precedent by holding this seat open for over a year. If the nominee cannot earn the support of 60 Senators, the answer is not to break precedent by fundamentally and permanently changing the rules and traditions of the Senate; the answer is to change the nominee. This idea that if Judge Gorsuch doesn't get 60 votes, the majority leader has to inexorably change the rules of the Senate—that idea is utter bunk.

It is the free choice of my colleagues on the other side of the aisle to pursue a change in rules if that is what they decide. And I would remind the majority leader that he doesn't come to this decision with clean hands. He blocked Merrick Garland for over a year. We wouldn't even be here if Judge Garland had been given fair consideration. That is why we are here today—not because of any Democrat.

BORDER WALL

Mr. SCHUMER. Mr. President, finally, on the wall—a place where there may be more agreement between some of us than on Judge Garland—last night we learned that the Trump administration will be seeking deep cuts to critical domestic programs in order to pay for a border wall. The administration is asking the American taxpayer to cover the cost of a wall—unneeded, ineffective, and absurdly expensive—that Mexico was supposed to pay for. He is cutting programs that are vital to the middle class in order to get that done.

They want to cut the New Starts Transportation Program and TIGER grants. These are the lifeblood of our road and tunnel and bridge building efforts. Build a wall or repair or build a bridge or tunnel or road in your community? What a choice. They want to cut off NIH funding for cancer research to pay for the wall. How many Americans would support that decision? They want to cut programs that create jobs and improve people's lives—all so the President can get his ''big, beautiful wall''—a wall that we don't need and that will be utterly ineffective. Think about that. The President wants to slow down cancer research and make the middle-class taxpayer shoulder the cost of a wall that Mexico was supposed to pay for. He wants to cut funding for roads and bridges to build a wall that Mexico was supposed to pay for.

The proposed cuts the administration sent up last night will not receive the support of very many people, I believe, in this Chamber. These cuts would be bad for the American people. They are not what the American people want, and they are completely against one of the President's core promises in his campaign. I believe they will be vigorously opposed by Members on both sides of the aisle.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

PROTOCOL TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF MONTENEGRO

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of Executive Calendar No. 1, the Montenegro treaty, which the clerk will state.

The senior assistant legislative clerk read as follows:

Treaty document No. 114–12, Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro.

Pending:

McConnell amendment No. 193, to change the enactment date.

McConnell amendment No. 194 (to amendment No. 193), of a perfecting nature.

The PRESIDING OFFICER. The majority whip.

THE PRESIDENT'S BUDGET

Mr. CORNYN. Mr. President, I came to the floor to talk about the nomination of Judge Gorsuch to serve as the next Supreme Court Justice, and I happened to walk in while the Democratic leader was speaking. In the brief time I heard him comment this morning, I concluded that basically the Democrats are against everything. They are against everything. He knows as well as anybody that when the President sends over a budget, it is a proposal by the President that Congress routinely changes, arriving at its own budget priorities, working with the White House.

NOMINATION OF NEIL GORSUCH

Mr. President, before I get too distracted by the minority leader's opposition to anything and everything, let me comment a little bit on the Gorsuch nomination.

We will meet next week, on April 3, to vote Judge Gorsuch's nomination out of the Senate Judiciary Committee, at which time his nomination will come to the floor. The world had a chance to see—and certainly all of America—during the 20 hours that Judge Gorsuch testified before the Judiciary Committee that he is a superb nominee. He is a person with a brilliant legal mind. He has an incredible educational resume and extensive experience both in the public sector—working at the Department of Justice—and in private practice and then for the last 10 years, of course, serving as a Federal judge on the Tenth Circuit Court of Appeals out of Denver.

I believe he is one of the most qualified nominees in recent history, to be sure, and you might have to go back into our early history to find somebody on par with Judge Gorsuch in terms of his qualifications for this important office. Unfortunately, in spite of this, we are seeing the minority leader threatening to filibuster this incredibly well-qualified judge. I hope other Democrats will exercise independence and do the right thing.

I was glad to see just yesterday our colleague, the former chairman of the Judiciary Committee, the senior Senator from Vermont, say that he had a different take. He was quoted in a Vermont newspaper—perhaps it is a blog—it is called VTDigger.org. Senator LEAHY, the former chairman of the Judiciary Committee, said: ''I am not inclined to filibuster.''

Just for the benefit of anybody who might be listening, let me distinguish between the use of the filibuster as opposed to voting against the nominee.

It is a fact that there has never been a successful partisan filibuster of a Supreme Court nominee in American history—never.

The only time cloture was denied on a bipartisan basis of a nominee to the Supreme Court was in 1968, when Abe Fortas was nominated by then-President Lyndon Johnson. Mr. Fortas, then serving as an Associate Justice on the Supreme Court of the United States, had a number of problems, one of which was that he was still advising President Johnson while he was a sitting member of the U.S. Supreme Court. He was basically giving political advice from the bench to the President of the United States, with whom he had a long-established relationship.

Then there was a suspicion that Earl Warren, the Chief Justice of the United States, had cut a deal with the President such that he would resign effective upon the qualifying of his successor. So there wasn't any literal vacancy to fill. The President would then nominate Abe Fortas, then an Associate Justice, and he would then nominate Homer Thornberry, then a judge on the Fifth Circuit Court of Appeals, to fill the Fortas Associate Justice slot. There were a couple of embarrassing items to Judge Fortas that caused a bipartisan denial of cloture, or the cutting off of debate, after which his nomination was withdrawn after 4 days of floor debate.

I mention all of this because sometimes people want to lead you down this rabbit trail, claiming that what they are doing is something that is well established in our history and in this precedence of the Senate when that is absolutely not true. There has never been a partisan filibuster of a Supreme Court nominee that has been successful in denying that Justice to the Supreme Court's nomination to be confirmed—never. What Democrats are threatening to do next week when

Judge Gorsuch's nomination comes to the floor is unprecedented. It has never happened before.

I am glad to hear some voices of sanity and wisdom from people like Senator LEAHY, who said he was not inclined to join in that filibuster. I also saw that our colleague from West Virginia, Senator MANCHIN, has said he will not filibuster the nominee. It is totally a separate issue as to whether they vote to confirm the nominee ultimately because, as we all know, in working here in the Senate, in order to get to that up-or-down vote, you have to get past this cloture vote, which requires 60 votes, and it has been traditional that we have not even had those cloture votes with regard to Supreme Court nominations.

As a matter of fact, there have only been four of those in our history. Two of them were with regard to William Rehnquist when nominated as Associate Justice to the Supreme Court and then when he was nominated to be Chief Justice of the Supreme Court. With Samuel Alito, there was cloture obtained. Ultimately, he won an up-or-down vote and got a majority of votes on the Senate floor. Then, of course, there was the Fortas nomination, which I mentioned earlier. In none of those four cases was there a partisan filibuster that denied an up-or-down vote to the nominee. Again, the only one that is a little of an outlier is the Fortas nomination, which was ultimately withdrawn, so the Senate did not have the opportunity to come back and revisit that initial failed cloture vote because of the ethical problems that led Judge Fortas to resign from the Supreme Court and return to private practice.

Let me talk a minute about the excuses our Democratic colleagues have given in opposing Judge Gorsuch.

First, they said they would fight a nominee who was not in the mainstream.

I believe that out of the 2,700 cases Judge Gorsuch has participated in, 97 percent of those have been affirmed on appeal—97 percent. He has only been reversed in maybe one case. I believe there was a discussion about it. There was even an argument as to whether that was an outright reversal. It is very unusual, in my experience, to see a judge who enjoys such a tremendous record of affirmance on appeal and such a very low record of reversal, particularly for an intermediate appellate court like the Tenth Circuit Court of Appeals.

After they realized this ''out of the mainstream'' argument wouldn't work, they then moved the goalpost. Some of my friends on the other side of the aisle have implied they might oppose Judge Gorsuch because of his refusal to answer questions about issues that could come before him on the Court. In doing so, the judge was doing exactly what is required by judicial ethics. In other words, how would you feel if the judge before whom you appeared had previously said ''If I get confirmed, I will never vote in favor of a litigant with this kind of case''? Judges do not do that. Judges are not politicians who run for office on a platform. In fact, judges are supposed to be the anti-politician—ruling on the law and the facts. It is not based on a personal agenda or a political agenda at all, and our colleagues know that.

This is the same rule that was embraced by Ruth Bader Ginsburg—someone whom our friends across the aisle admire on the Court. Elena Kagan did the same thing in refusing to comment or speculate, saying that it would be improper for them to prejudge these cases or to campaign, basically, for a lifetime appointment on the Supreme Court. Judge Gorsuch did the same thing as Justices Ginsburg and Kagan, and he fulfilled his ethical obligations as a sitting judge and preserved the independence of the judiciary by keeping an open mind as to cases that come before him.

When they failed to make the case that Judge Gorsuch was somehow out of the mainstream, when they failed to make the case that he somehow was being nonresponsive in his answering questions by the Judiciary Committee, the goalpost moved yet again. Last week, some suggested that Judge Gorsuch never ruled in favor of the ''little guy.'' This was following a line of arguments peddled by some outside groups who were trying to paint Judge Gorsuch as unsympathetic to the litigants who appeared in his court.

Fortunately, Judge Gorsuch set the record straight. He made clear that his motivation in each and every case is to follow the law wherever it may lead and to reach a decision based on where the law stands, not on his personal opinion or emotions. Again, a good judge does not judge the litigants but, rather, the case at hand.

I should point out, as I did with regard to the more than 2,700 cases Judge Gorsuch has decided, that virtually all of them have been affirmed, meaning that every judge on the panel, including those nominated by Democrats, reached the same conclusion that he did, and they were approved, or affirmed, by the higher court, certainly not reversed.

I think our colleagues are making a tragic mistake by denying this President his nominee for the Supreme Court of the United States. If Judge Gorsuch is not good enough for them, they will never vote to confirm any nominee from this or any other Republican President of the United States. What would happen if that view were to prevail? I think we would see the Supreme Court essentially become nonfunctional and shut down, and litigants who were hoping to get access to a hearing before the Court would have nowhere to turn. It is not acceptable.

Some of our colleagues remind me of the old story about the child who murders his parents and then comes before the court and asks for leniency, saying: I am an orphan. This is a situation of their own making.

I really regretted hearing the Democratic leader talk about a case in which somehow there was the argument that because the judge followed the precedent that then existed but that a future decision in a Supreme Court case changed that precedent—that the judge should have anticipated it and somehow failed to follow the current precedent because the Supreme Court at some later date might change that precedent. It makes absolutely no sense.

So what our colleagues are doing is basically saying that no nominee of President Trump's or any Republican nominee is going to get confirmed to the Supreme Court because it is going to require 60 votes to do so. This would be unprecedented in our Nation's history. I think it will be an abuse of the power we have in the Senate of encouraging debate, which is the cloture vote, by filibustering this outstanding nominee.

I have said it before and I will say it again: Judge Gorsuch is going to have his day on the Senate floor. We are going to have a fulsome debate. We are going to give our Democratic colleagues a chance to do the right thing and to vote at some point to cut off debate and then have an up-or-down vote to confirm the nominee, just as has happened in every single case before, with the possible exception of the Fortas nomination, which I described earlier, which was ultimately withdrawn and the judge resigned because of an ethical scandal.

I hate to see our colleagues taking us down this path, but they are determined to oppose anything and everything these days. We used to say there was a difference between campaigning and governing. Basically, they are so upset with the outcome of the election that they are continuing the political campaign now and making it impossible for us to do our work here in the Senate. It is a crying shame.

I can only hope that cooler heads will prevail and that others in the Democratic caucus will listen to Senator LEAHY and others who say they are not inclined to filibuster. Whether they decide to vote against the nominee is entirely up to them, but denying the majority in the Senate a chance to vote to confirm the nominee is simply unacceptable, and it will not stand.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. Mr. President, confirming a Supreme Court nominee is one of the Senate's most significant constitutional responsibilities. I come

to the floor today to announce that I shall cast my vote for Judge Neil Gorsuch to be a Justice of the U.S. Supreme Court. In making my decision, I evaluated Judge Gorsuch's qualifications, experience, integrity, and temperament. I questioned him for more than an hour in a meeting in my office, evaluated his record, spoke with people who know him personally, and reviewed the Judiciary Committee's extensive hearing record. While I have not agreed with every decision Judge Gorsuch has made, my conclusion is that he is eminently well qualified to serve on our Nation's highest Court.

Judge Gorsuch has sterling academic and legal credentials. In 2006, the Senate confirmed this outstanding nominee by a voice vote to his current position on the U.S. Court of Appeals. A rollcall vote was neither requested nor required.

Judge Gorsuch's ability as a legal scholar and judge has earned him the respect of members of the bar. The American Bar Association Standing Committee on the Federal Judiciary has unanimously given him its highest possible rating of ''well qualified.'' President Obama's former Acting Solicitor General testified before the Judiciary Committee in support of Judge Gorsuch, praising him as fair, decent, and committed to judicial independence.

I have also received a letter signed by 49 prominent Maine attorneys with diverse political views, urging support for Judge Gorsuch's nomination. They wrote:

> Gorsuch's judicial record demonstrates his remarkable intelligence, his keen ability to discern and resolve the central issues at dispute in a legal proceeding . . . and his dedication to the rule of law rather than personal predilections. His judicial record also confirms that he is committed to upholding the Constitution, enforcing the statutes enacted by Congress, and restraining overreach by the executive branch.

In my view, these are precisely the qualities that a Supreme Court Justice should embody.

I ask unanimous consent that this letter be printed in the RECORD following my remarks.

Our personal discussion allowed me to assess the judge's philosophy and character. I told him that it was important to me that the judiciary remain an independent check on the other two branches of government as envisioned by our Founders. Therefore, I asked him specifically whether anyone in the administration had asked him how he would rule or sought any commitment from him on any issue. He was unequivocal that no one in the administration had asked him for such promises or to prejudge any issue that could come before him. He went on to say that the day a nominee answered how he would rule on a matter before it was heard or promised to overturn a legal precedent, that would be the end of an independent judiciary.

During the Judiciary Committee hearings, when Senator LINDSEY GRAHAM asked him a similar question about whether he was asked to make commitments about particular cases or precedents, he gave the same answer. In fact, Judge Gorsuch notably said that if someone had asked for such a commitment, he would have left the room because it would never be appropriate for a judge to make such a commitment, whether asked to do so by the White House or a U.S. Senator.

Neil Gorsuch is not a judge who brings his personal views on any policy issues into the courtroom. If it can be said that Judge Gorsuch would bring a philosophy to the Supreme Court, it would be his respect for the rule of law and his belief that no one is above the law, including any President or any Senator.

I am convinced that Judge Gorsuch does not rule according to his personal views, but rather follows the facts and the law wherever they lead him, even if he is personally unhappy with the result. To paraphrase his answer to one of my questions about putting aside his personal views, he said that a judge who is happy with all of his rulings is likely not a good judge.

The reverence that Judge Gorsuch holds for the separation of powers, which is at the core of our American democracy, was also evident in our discussion. As he reiterated throughout his confirmation hearing, the duty to write the laws lies with Congress, not with the courts and not with the executive branch. Members of this body should welcome his deep respect for that fundamental principle.

Judge Gorsuch's record demonstrates that he is well within the mainstream of judicial thought. He has joined in more than 2,700 opinions, 97 percent of which were unanimously decided, and he sided with the majority 99 percent of the time.

I asked Judge Gorsuch how he approaches legal precedents. I asked him if it would be sufficient to overturn a long-established precedent if five current Justices believed that a previous decision was wrongly decided. He responded: ''Emphatically no.'' And that, to me, is the right approach. He said a good judge always starts with precedent and presumes that the precedent is correct.

During his Judiciary Committee hearing, Judge Gorsuch described precedent as ''the anchor of the law'' and ''the starting place for a judge.'' He has also coauthored a book on legal precedent with 12 other distinguished judges, for which Justice Stephen Breyer wrote the introduction.

Now, there has been considerable discussion over the course of this nomination process about the proper role of the courts in our constitutional system of government. It is also important for us to consider the roles that the executive and legislative branches play in the nomination process.

Under the Constitution, the President has wide discretion when it comes to nominations to the Supreme Court. The Senate's role is not to ask, Is this the person whom I would have chosen to sit on the bench? Rather, the Senate is charged with evaluating each nominee's qualifications for serving on the Court.

I have heard opponents of this nominee criticize him for a variety of reasons, including his methodology and charges that he is somehow extreme or outside of the mainstream. But I have not heard one Senator suggest that Judge Gorsuch lacks the intellectual ability, academic credentials, integrity, temperament or experience to serve on the U.S. Supreme Court. Yet it is exactly those characteristics that the Senate should be evaluating when exercising its advice and consent duty.

This is especially true when Senators contemplate taking the extreme step of filibustering a Supreme Court nomination. As you well know, unfortunately, it has become Senate practice of late to filibuster almost every question before this body simply as a matter of course. But that would be a serious mistake in this case, and it would further erode the ability of this great institution to function. In 2005, when the Senate was mired in debate over how to proceed on judicial nominations, a bipartisan group of 14 Senators proposed a simple and reasonable standard. That group—of which I am proud to have been a part—declared that for Federal court nominations a Senator should only support a filibuster in the case of extraordinary circumstances.

Since coming to the Senate, I have voted to confirm four Justices to the Supreme Court. Two were nominated by a Democratic President, and two were nominated by a Republican President. Each was confirmed: Chief Justice Roberts by a vote of 78 to 22, Justice Alito by a vote of 58 to 42, Justice Sotomayor by a vote of 68 to 31, and Justice Kagan by a vote of 63 to 37.

Before I became a Senator, this body confirmed Justice Kennedy, 97 to 0; Justice Scalia, 98 to 0; Justice Thomas, 52 to 48; Justice Ginsburg, 96 to 3; and Justice Breyer, 87 to 9.

Note that two of the current members of the Supreme Court were confirmed by fewer than 60 votes, but consistent with the standard that we established in 2005, neither one was filibustered.

Even Robert Bork, whose contentious confirmation hearings are said to have been the turning point in the Senate's treatment of Supreme Court nominations, was rejected by a simple failure to secure a majority of votes—42 yeas to 58 nays—not by a Senate filibuster. In fact, the filibuster has been used successfully only once in modern history to block a Supreme Court nomination. That was an attempt to elevate Justice Abe Fortas to be Chief Justice in 1968, nearly half a century ago. In that case, Justice Fortas ended up withdrawing under an ethical cloud.

The result of the votes on Justice Alito's nomination are also illuminating. In 2006 Senators voted to invoke cloture by a vote of 75 to 25. That is considerably more Senators than those who ultimately voted to confirm him, which was accomplished by a vote of 58 to 42. Here again, Senators proceeded to a ''yes'' or ''no'' vote on the nomination.

Let me be clear. I do believe strongly that it is appropriate for the Senate to use its advice and consent power to examine nominations carefully or even to defeat them. In fact, I have voted against judicial nominees of three Presidents. But playing politics with judicial nominees is profoundly damaging to the Senate's reputation and stature. It politicizes our judicial nomination process and threatens the independence of our courts, which are supposed to be above partisan politics. Perhaps most importantly, it undermines the public's confidence in the judiciary.

Since the Founders protected against the exertion of political influence on sitting Justices, the temptation to do everything in one's power to pick nominees with the right views is understandably very strong. But the more political Supreme Court appointments become, the more likely it is that Americans will question the extent to which the rule of law is being followed. It erodes confidence in the fair and impartial system of justice, and it cultivates a suspicion that judges are imposing their personal ideology.

The Senate has the responsibility to safeguard our Nation against a politicized judiciary. The Senate should resist the temptation to filibuster a Supreme Court nominee who is unquestionably qualified, the temptation to abandon the traditions of comity and cooperation, and the temptation to further erode the separation of powers by insisting on judicial litmus tests. It is time for the Senate to rise above partisanship and to allow each and every Senator to cast an up-or-down vote on this nominee.

This nomination deserves to move forward, as the dozens of distinguished Maine attorneys who wrote to me in support of his nomination said:

In sum, during his tenure on the U.S. Court of Appeals, Judge Gorsuch distinguished himself as a judge who follows the law with no regard for politics or outside influence. We could not ask for more in an associate Justice.

I agree, and I look forward to the confirmation of Judge Neil Gorsuch to be a Justice of the U.S. Supreme Court.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MARCH 23, 2017.

Re: Nomination of Judge Neil Gorsuch.

Hon. SUSAN M. COLLINS,
U.S. Senator, Dirksen Senate Office Building, Washington, DC.

Hon. ANGUS S. KING,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATORS COLLINS AND KING: The undersigned Maine attorneys respectfully request that you support the confirmation of Judge Neil M. Gorsuch as Associate Justice of the United States Supreme Court.

Our practices are varied by geography, practice area, size of firm, and type of clients we represent. We also hold a diverse set of political views. Nonetheless, we agree that Judge Gorsuch is exceptionally well qualified to join the Supreme Court.

As members of the Maine legal community, we have an interest in the nomination of Judge Gorsuch. While most of us will never have the opportunity to appear before the United States Supreme Court, each of us has a strong interest in supporting the confirmation of highly qualified jurists who will maintain the Supreme Court's commitment to the rule of law. The precedents established by the Supreme Court affect each of us and the fellow Mainers whom we serve as our clients.

As you have surely found during the nomination process, Judge Gorsuch is eminently qualified to serve as Associate Justice. His qualifications were recently confirmed by the American Bar Association, which rated him as ''well qualified,'' its highest rating. Judge Gorsuch's judicial record demonstrates his remarkable intelligence, his keen ability to discern and resolve the central issues at dispute in a legal proceeding, his notably clear and concise writing style, and his dedication to the rule of law rather than personal predilections. His judicial record also confirms that he is committed to upholding the Constitution, enforcing the statutes enacted by Congress, and restraining overreach by the Executive Branch. He voted with the majority in 98 percent of the cases he heard on the Tenth Circuit, and was frequently joined by judges appointed by Democratic Presidents. Seven of his opinions have been affirmed by the Supreme Court—four unanimously—and none reversed.

In sum, during his tenure on the U.S. Court of Appeals, Judge Gorsuch distinguished himself as a judge who follows the law with no regard for politics or outside influence. We could not ask for more in an Associate Justice and we ask for your strong support of him and vote of confirmation.

Sincerely,

John J. Aromando; Brett D. Baber; Shawn K. Bell; Daniel J. Bernier; Fred W. Bopp III; Timothy J. Bryant; Aaron D. Chadbourne; John W. Chapman; Michael J. Cianchette; Roger A. Clement, Jr.; Randy J. Creswell; Christopher M. Dargie; Avery T. Day; Bryan M. Dench; Thomas R. Doyle; Michael L. Dubois; Joshua D. Dunlap; Charles S. Einsiedler, Jr.

James R. Erwin; Kenneth W. Fredette; Justin E. French; Benjamin P. Gilman; Kenneth F. Gray; P. Andrew Hamilton; Jeffrey W. Jones; Ralph I. Lancaster, Jr.; Ronald P. Lebel; Tyler J. LeClair; Scott T. Lever; William P. Logan; Holly E. Lusk; Chase S. Martin; Sarah E. Newell; Bradford A. Pattershall; Dixon P. Pike; Gloria A. Pinza.

Susan J. Pope; Michael R. Poulin; Norman J. Rattey; Daniel P. Riley; Adam J. Shub; Joshua E. Spooner; Robert H. Stier, Jr.; Patrick N. Strawbridge; Alexander R. Willette; Timothy C. Woodcock; Eric J. Wycoff; Sarah S. Zmistowski; Thad B. Zmistowski.

Ms. COLLINS. I yield the floor.

Seeing no one seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FLAKE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Missouri.

Mr. BLUNT. Mr. President, I come today to talk about the nomination of Judge Neil Gorsuch to serve on the U.S. Supreme Court. Once again, throughout the hearings last week, Judge Gorsuch proved that he has the knowledge, he has the temperament, and he has the experience to serve on our Nation's highest Court. He laid out a clear judicial philosophy that adheres to what I think most Americans want to see happen today on the Court and what clearly the Framers of the Constitution thought would happen.

In his own words, Judge Gorsuch said: ''I have one client, it's the law.'' That is the way the Founders saw the Supreme Court. They didn't see it as a legislative body. All good judges had to do was to read the law. They didn't have to be happy with the law. They didn't have to approve the law. They didn't have to determine that the law and the Constitution met their exact standard. They just had to determine what the law and the Constitution said. In fact, the first Supreme Court had six judges. There was no thought that it was a legislative body that had to have a tie-breaking judge so you could legislate.

They thought six judges were plenty. By the way, they thought they needed six circuits. Each of those judges rode a circuit. So even when there was an appeal to the Supreme Court, one of the judges had already heard the case at the lower level. That judge heard the case again and then listened to see if that judge heard anything new, something that might change their mind. The other five of them were sitting there with the appeal of one of their colleagues, and nobody saw that as a problem because the Court wasn't about legislating.

The Court was about determining what the law should say. Again, Judge Gorsuch said: ''I have one client, it's the law.'' It is not the little guy. It is not the big guy. It is not the medium-size guy: It is the law. He was asked over and over: Are you going to find for the little guy or the big guy? Well, that is not the judge's job. The judge's job is to read the law so both the little guy and the big guy know when they are in court that this is a country where the rule of law matters. They know, when they enter into a contract, that if you and your lawyer have read the law right, there shouldn't, at the end of the day, be very much gray space about what that contract said.

Throughout his career, Judge Gorsuch has demonstrated his commitment to interpret the Constitution as it is written, applying the rule of law and not legislating from the bench. ''Judges are not politicians in robes.'' I think that may be another Gorsuch comment: ''Judges are not politicians in robes.'' If he didn't say it, his career as a judge shows that he believes it. Unfortunately, some of my colleagues have shown that their deference to the Constitution is not the same when it

comes to the Senate's role to advise and consent.

I am particularly dismayed by the Democratic leader's intention to filibuster Judge Gorsuch's nomination. Republicans have never filibustered a Democratic nominee, yet colleagues across the aisle appear willing to do just that. Such a maneuver would only be an affront to our national norms.

I don't know in the history of the country—I think there was one filibuster led by Democrats against a nomination by a Democrat President when Lyndon Johnson nominated Abe Fortas to move from Associate Justice to the Chief Justice's role. It didn't happen in 1968 because it was a Presidential year and Justices don't get confirmed in the Supreme Court in a Presidential year in vacancies that hadn't even occurred yet. No. 2, it was led by Democrats in a Senate that had an overwhelming Democratic majority. There has never been a partisan filibuster effort involving any Justice on the Supreme Court until right now—until right now—and I am disappointed that that is what the Democratic leader of the Senate says he wants to do.

According to Robert David Johnson, a Brooklyn College history professor, ''The chances of success'' of a partisan filibuster ''are basically zero.'' So my thought would be: Why pursue it?

Kim Strassel recently wrote in the Wall Street Journal: ''Never in U.S. history have we had a successful partisan filibuster of a Supreme Court nominee.''

In the last half century, only three Supreme Court Justices have even faced a filibuster. The most recent, Justice Alito, was ultimately confirmed when 19 Democrats refused to back the filibuster of his nomination. He had the full vote, and he got a majority vote.

One would think that if Senate Democrats are willing to upend Senate tradition to block this nomination, they would have an unassailable reason to block it. They would be saying this judge is not qualified. This judge hasn't served his time. We don't know what he would do as a judge. He has been on the circuit court of appeals for a decade, and when looking at case after case, appeal after appeal, we see his unbelievably fine record as a judge.

In announcing his intention to mount this filibuster, the leader of the Democrats in the Senate said that Judge Gorsuch ''was unable to sufficiently convince me that he'd be an independent check'' on the executive branch. The American Bar Association unanimously gave Judge Gorsuch's nomination their highest rating. They disagree. As they explained, ''based on writings, interviews, and analyses we scrutinized to reach our rating, we discerned that Judge Gorsuch believes strongly in the independence of the judicial branch of government, and we predict that he will be a strong but respectful voice in protecting it.''

This is from the American Bar Association, which many of my colleagues on both sides of the aisle have said over and over again is the ultimate test of qualification for the Court.

When I met with the judge last month, he left no doubt in my mind that he would uphold the judiciary's unique constitutional role in our system of checks and balances.

Let me go back to the other quote here for a minute. What was it that the Senator from New York said? ''Judge Gorsuch was unable to sufficiently convince me that he'd be an independent check'' on the executive branch. I am not even sure I know where in the Constitution that is the job of the judge. The job of the judge is to read the law and look at the Constitution. The job of the Congress is to pass the law. The job of the President is to sign the law. Unless there is some constitutional problem with that law, it is not the judge's job to decide whether the law is right or not, unless there is a constitutional reason to do that.

Last week, I mentioned Judge Gorsuch's qualifications for the bench, but I think they bear repeating as we enter the next few days. As a graduate of Columbia University, a graduate of Harvard Law and Oxford University, his academic credentials are at the highest level. Judge Gorsuch has served his country admirably as a Supreme Court clerk, first for a Democrat on the Court, Byron White, who had been appointed by President Kennedy, and for a Republican appointee, Anthony Kennedy, appointed by President Reagan. He has been the principal Deputy Associate Attorney General of the United States at the Department of Justice, and in 2006, George W. Bush nominated him to serve on the Tenth Circuit Court of Appeals. The Senate unanimously confirmed his position at that time. Every single Democrat—12 of them now serving in the Senate who were in office, supported his nomination in 2006. In the decade that he served on the Tenth Circuit Court, he has shown independence, integrity, and he has shown a mainstream judicial philosophy. He has demonstrated a legal capacity that makes him a worthy successor to Justice Scalia on the Court. There is no precedent for requiring a 60-vote threshold to confirm a Supreme Court Justice, and Judge Gorsuch has given this body no reason to demand one now.

I look forward to supporting his nomination. It will reach the Senate floor, I believe, after the Judiciary Committee deals with it early next week. I hope by the time we leave here a week from Friday that Judge Gorsuch is on his way to join the Supreme Court as an Associate Justice. By the way, if he does that, he will be the first Associate Justice ever to serve on the Court with a Justice for whom he clerked two decades or more ago. When he and Justice Kennedy get a chance to serve together—I look forward to seeing that happen.

ORDER FOR RECESS

Mr. President, I ask unanimous consent that the Senate recess from 12:30 p.m. until 2:15 p.m. today for the weekly conference meetings.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BLUNT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I rise to speak on the nomination of Judge Neil Gorsuch to serve on the U.S. Supreme Court.

It is important to reflect for a moment on how we have reached this moment. It has been more than a year since the untimely passing of Justice Antonin Scalia in February of 2016. Under article II, section 2 of the U.S. Constitution, President Barack Obama had a duty to make a nomination to fill that vacant seat. He met that obligation by nominating Chief Judge Merrick Garland in March of 2016.

Yet the leader of the Senate Republicans, Majority Leader MCCONNELL, announced that, for the first time in the 230-year history of the Senate, he would refuse the President's nominee, Judge Garland, a hearing and a vote. Senator MCCONNELL further said that he would refuse to even meet with Judge Garland. It was a transparent political decision made by the Republican leader in the hopes that a Republican would be elected President and fill the vacancy. It was part of a broader Republican political strategy to influence, if not capture, the judicial branch of government on every level of the court system.

Not only did the Senate Republicans keep a Supreme Court seat vacant for over a year, they turned the Senate's Executive Calendar into a nomination obituary column for 30 other judicial nominees who had been reported out of the Judiciary Committee with bipartisan support. They were hoping a Republican President would fill all of those seats, and they were prepared to leave them vacant for a year or more to achieve that end.

What kind of nominees were they hoping for? Nominees who had been blessed by special interests, by big business, and by Republican advocacy organizations.

It was last year that then-Candidate Donald Trump released a list of 21 potential Supreme Court candidates who were handpicked by two Republican advocacy groups—the Federalist Society and the Heritage Foundation. I am not speculating on the fact that they were chosen by those two groups, as President Trump publicly thanked the groups for giving him a list of names with which to fill the vacancies on the Supreme Court. It was unprecedented for anyone, including a candidate for President, to outsource the judicial selection process to special interest

groups, but President Trump did it. True to his word to these special interest groups, he nominated one of the names on the list—Judge Neil Gorsuch.

The first telephone call Judge Gorsuch received about his nomination was not from the White House; it was from the Federalist Society, which was one of these Republican advocacy groups. Eventually, Judge Gorsuch made it to the interview stage with President Trump's inner circle. He met with Steve Bannon, Reince Priebus, and President Trump himself. Those men each took the measure of Judge Gorsuch and gave him their approval to serve for a lifetime appointment on the highest Court in the land. President Trump, who had announced numerous litmus tests for judicial nominations, appeared very satisfied with Neil Gorsuch as his nominee.

The President's Chief of Staff, Reince Priebus, even said: ''Neil Gorsuch . . . represents the type of judge that has the vision of Donald Trump.''

There was certainly no political subtlety in that evaluation.

After Judge Gorsuch's nomination was announced, a dark money machine shifted into gear. A national campaign, which cost at least $10 million, was launched to support the Gorsuch nomination. Because it is dark money, there is no disclosure about who is bankrolling this effort, but it is a safe bet that the suppliers of dark money have at least a passing interest in cases before the U.S. Supreme Court.

Despite this unprecedented and unsettling process that led to Judge Gorsuch's nomination, the Democrats on the Senate Judiciary Committee gave Judge Gorsuch a courtesy that Republicans denied to Judge Garland—a hearing and a vote. Why? Because Senate Democrats take the Constitution seriously. We do not turn our backs on the constitutional responsibility of advice and consent, even though that is exactly what our Republican colleagues did when it came to Merrick Garland.

Last week, the Senate Judiciary Committee met for 4 days to consider the Gorsuch nomination. In leading up to the hearing, I made it clear on the Senate floor that I thought that Judge Gorsuch had a burden to bear at that hearing.

On February 2, I said here on the floor that Judge Gorsuch needed to demonstrate that he would be a nominee who would uphold and defend the Constitution for the benefit of everyone, not just for the advantage of a privileged few who happened to engineer his nomination.

I also said that Judge Gorsuch needed to be forthright with the American people about his record and his views. I made it clear that avoiding answers to critical questions was unacceptable.

I said that he needed to demonstrate that he would be an independent check on President Trump and every President and that he was prepared to disappoint the President and the right-wing groups that handpicked him if the Constitution and the law required it.

Judge Gorsuch was given a full and fair hearing. He was given every opportunity to explain his judicial record and his views and to meet the expectations I laid out for him. I came away from this hearing firmly convinced that I must oppose the nomination of Neil Gorsuch.

Here are the reasons:

Judge Gorsuch favors corporations and elites over the rights and voices of Americans, often using selective textualism to advance his agenda. Judge Gorsuch's hearing reinforced my fear that he would lean toward corporations and special interest elites at the expense of American workers and families.

Big business and special interests have found a friend under the Roberts Supreme Court. I noted at the hearing a study by the Constitutional Accountability Center that found that under Chief Justice John Roberts the Supreme Court has ruled for positions that have been advocated by the Chamber of Commerce 69 percent of the time.

I am concerned, based on a review of his record, that Judge Gorsuch is likely to increase the pro-business leanings of the Roberts Court. In a series of decisions—and I have read many of them—involving workers' rights, discrimination claims, consumer rights, and access to the courts, Judge Gorsuch has, time and again, favored corporations. He has often substituted his own judgment for those of the agencies that are tasked with protecting the workers.

No case was more egregious than the TransAm Trucking case, which was brought up repeatedly at the hearing. The facts are pretty well known by now. In January, Alphonse Maddin, a truck driver from Detroit, was stuck on the side of Interstate 88 in my home State of Illinois, and it was 14 degrees below zero outside. The brakes on his trailer were frozen. After waiting for a repair truck for several hours without his having any heat in the cab of his truck, Alphonse Maddin's body was starting to go numb. He called the trucking company one more time. They said: You have two options—stay in that truck or drag that frozen trailer down the interstate highway.

Both of those options were a risk to health and safety and common sense. So, instead, Al Maddin unhitched the broken-down trailer and drove to a gas station to fuel up and get warm and then returned to the disabled trailer. For this, the company fired him, and that firing blackballed him from ever working as a truck driver again.

Al Maddin came by my office and explained what he did. He had heard that there was some Federal agency that might consider what he had considered to be an unfair firing, so he went down to the agency and took out a ballpoint pen and filled out the complaint in longhand without the advice of counsel or any help. He was shocked when he won.

The case went further on appeal. Seven different judges heard Al Maddin's case. Six of them agreed that what had happened to him was unfair and unlawful. The only judge who found for the trucking company was Neil Gorsuch.

Judge Gorsuch's dissent claimed that he was merely looking at the plain text of the law and the dictionary's definition and that was why Al Maddin had been fired. But the Tenth Circuit majority said that Neil Gorsuch was cherry-picking one dictionary's definition to come to his conclusion. Other dictionaries and the law's purpose of protecting health and safety had been ignored by Judge Gorsuch.

Republican nominees like Judge Gorsuch often claim they are using the supposedly neutral philosophies of originalism and textualism to guide their decision making, but Al Maddin's case shows how Judge Gorsuch used a selective choice of text to advance a pro-business agenda at the expense of this American worker.

There are many other cases in Judge Gorsuch's record that demonstrate this trend, leading the Associated Press to say that Gorsuch's workers' rights opinions are ''often sympathetic but coldly pragmatic, and they're usually in the employer's favor.''

Take a look at the Hobby Lobby case. In that case, Judge Gorsuch expanded the idea that a corporation—a business—is a person. Why? He wanted to permit a for-profit corporation to impose its owners' personal religious beliefs on more than 13,000 employees who worked at that corporation and to limit their access to healthcare under insurance policies.

In finding for the corporation, Judge Gorsuch barely acknowledged that this decision burdened these thousands of employees and their personally constitutionally protected religious beliefs and choices.

Judge Gorsuch also has a troubling record when it comes to protecting the rights of Americans with disabilities and those who are victims of discrimination. It was quite a scene when, last week, in the midst of our hearing on Judge Gorsuch, the Supreme Court issued a unanimous ruling that rejected a standard that had been created by Judge Gorsuch. I am sure that has never happened in history. This standard, which Judge Gorsuch had promoted for a case in which he wrote the majority opinion, weakened protections for students with disabilities under the Individuals with Disabilities Education Act.

In 2008, Judge Gorsuch wrote in the Luke P. case that, under the IDEA, schools need only to provide educational benefits to students with disabilities that are merely more than de minimis.

At issue was the legal responsibility of a school district to provide educational opportunities for a child with

disabilities. In this case, Luke was a boy from Colorado who had suffered from severe autism. With the assistance and support of his teachers, Luke had made significant progress in school—in kindergarten and first grade. Then, when his family moved to a new home, he had to change school districts. At his new school, Luke began to lose the skills he had gained. His behavior was worse.

After unsuccessful attempts to address these concerns, Luke's parents decided that they ''could not in good conscience continue to expose their son, Luke, to this environment that was so detrimental to his educational and behavioral development.'' They decided to enroll Luke in a residential school that was dedicated to the education of children with his type of autism spectrum disorder.

A due process hearing officer, a Colorado State administrative law judge, and a Federal district court all found that the school district had failed to provide the education that was guaranteed to Luke under the Federal law of IDEA and that it was, therefore, required to reimburse the cost of the private residential school placement that Luke needed.

His parents were desperate to give Luke a chance in life, but then Judge Gorsuch ruled against them. In so doing, he created a new, lower standard for school districts in the process.

I asked Judge Gorsuch about this. He claimed he was just following the law and precedent, but as I pointed out at the hearing, that was not accurate. A legal analysis showed that Judge Gorsuch was the first judge in that circuit to add the word ''merely'' to the standard.

Luke P.'s father, Jeff, testified at the hearing and said that Judge Gorsuch's ''subtle wordcraft'' had the effect of ''further restricting an already restricted precedent with, unfortunately, my son in the bull's-eye of that decision.''

What did Chief Justice John Roberts of the U.S. Supreme Court say of the Gorsuch standard? Here is what he said: ''When all is said and done, a student offered an educational program providing 'merely more than de minimis' progress [Gorsuch's words] from year to year can hardly be said to have been offered an education at all.''

The Supreme Court sent a strong message when they released this opinion in the midst of Judge Gorsuch's hearing. The Court unanimously said that the Judge Gorsuch standard was inconsistent with the law. On this issue, Judge Gorsuch, the nominee, is somewhere to the right even of Justice Clarence Thomas. This case is not an outlier. In fact, an analysis of his disability decisions shows that Judge Gorsuch has ruled against disabled students in 8 out of 10 IDEA cases.

There was also a consistent pattern of Judge Gorsuch's record on discrimination and retaliation involving employers. Bloomberg BNA analyzed this record and found that he ruled for employers 8 out of 12 times.

For example, he ruled against a sex discrimination claim brought by a UPS saleswoman; a disability discrimination claim that was brought by a college professor; an age discrimination claim that was brought by two maintenance workers; a race discrimination claim that was brought by an African-American grocery store employee who was called a ''monkey'' by his supervisor; a gender and disability discrimination claim that was brought by a female county accountant with multiple sclerosis; and a discrimination claim that was brought by a transgender woman who sought to use the restroom of her gender identity.

The case of Grace Hwang was particularly troubling to me. Ms. Hwang had been a college professor for 15 years. Then she was diagnosed with cancer. She needed a bone marrow transplant, so they gave her 6 months of sick leave. As it was about to expire, they told her to return to the classroom. Just at this same time, a flu epidemic was sweeping across the campus. Ms. Hwang asked to extend her leave and work from home so she wouldn't get infected. She felt especially vulnerable, having just had a bone marrow transplant.

The university denied her request and terminated her employment because she asked to be protected from this flu epidemic. Judge Gorsuch authored an opinion upholding the dismissal of Ms. Hwang's disability discrimination complaint.

Judge Gorsuch would not let a jury consider the reasonableness of her request. Instead, he wrote that six months' leave was ''more than sufficient'' and wrote that the purpose of disability law is ''not to turn employers into safety net providers for those who cannot work.''

Grace Hwang's children said that Judge Gorsuch's opinion ''removed the human element from the equation. It did not bring justice.''

Also, during the hearing, Judge Gorsuch refused to distance himself from the extreme and bigoted views of one of his college professors and his dissertation supervisor, Professor John Finnis, a man whom he has publicly praised.

Overall, Judge Gorsuch's record raised serious concerns about what his confirmation would mean for the vulnerable and the victimized.

We also came to learn that Judge Gorsuch was an aggressive defender of Executive power when he worked at the Justice Department during the Bush administration. In June 2004, after the terrible Abu Ghraib torture scandal, I offered the first legislation to ban cruel and inhuman treatment of detainees. This legislation ultimately became the McCain torture amendment, which, despite a veto threat by President Bush, passed this Senate in 2005 by an overwhelming 90-to-9 vote.

But Judge Gorsuch advocated that the President should issue a statement claiming that the McCain amendment was ''essentially codifying'' torture techniques like waterboarding. This is despite overwhelming evidence from Senator MCCAIN and others in Congress that this amendment was intended to do the exact opposite by outlawing cruel, inhuman, and degrading treatment.

Judge Gorsuch testified that he was simply an attorney working for a client, but Gorsuch's email correspondence revealed that he was viewed as a ''true loyalist'' to the Republican administration. And this is a client that the judge actively lobbied to serve, even though their troubled record on torture was already a matter of public record.

These documents from Gorsuch's tenure at the Department of Justice, which were not available during his earlier confirmation hearing for the Tenth Circuit, provide a revealing look at his beliefs on Executive power. They raise deeply troubling questions about what Judge Gorsuch would do if he is called upon to stand up to this President or any President who claims the power to ignore laws that protect fundamental human rights.

For the majority of questions from Democratic Senators at his hearing, Judge Gorsuch failed to meaningfully respond. He had a standard set of evasions and nonanswers that he used whenever he was asked about fundamental legal principles and landmark cases. It didn't take long before this Senator, and many others, could finish his sentences before he started.

In ducking these critical questions, Judge Gorsuch ended up saying nothing to assuage my concerns about Reince Priebus's pronouncement that Judge Gorsuch ''has the vision of Donald Trump.''

The Supreme Court must serve as an independent check on President Trump, not a rubberstamp. But Judge Gorsuch wouldn't even comment on the original meaning of the Constitution's emoluments clause, apparently for fear of possibly implicating the President who nominated him.

Judge Gorsuch might not be the first nominee to avoid answering questions about his views, but he went further than others. As a result, members of the committee can look only to his judicial record and his work for the Justice Department to decide their vote for this lifetime appointment on the Supreme Court.

His record on the bench and his record at the Justice Department make it clear that Judge Gorsuch is not the right person to serve in the highest Court in the land. We all want judges to follow the law and apply the facts fairly, but it is naive to believe that this is some kind of robotic exercise. Every judge brings some values to the court. In close cases, those values can tip the meaning of the law or even the facts before the court. One key purpose of these hearings is to provide reassurance that the nominee's values are in

the American mainstream. I did not find this assurance in Judge Gorsuch's testimony last week, and I certainly didn't find it in his record. He received a fair hearing, but he did not earn my vote.

Because Republicans control the Senate, we can expect Judge Gorsuch to be reported out of the Judiciary Committee next week and then to receive a vote on the Senate floor. But no one should be surprised that Judge Gorsuch will need to meet the threshold of 60 Senate votes in order to be confirmed.

Majority Leader MCCONNELL has made clear time and again that 60 votes is the standard for matters of controversy in this Senate. I will cite a few of the leader's more memorable quotes.

On December 2, 2007, Senator MCCONNELL said: ''I think we can stipulate once again for the umpteenth time that matters that have any level of controversy about it in the Senate will require 60 votes.''

On October 28, 2009, Senator MCCONNELL said: ''Well, it's fairly routine around the Senate that controversial matters require 60 votes.''

Then again, on July 17, 2007, Senator MCCONNELL said: ''Sixty votes in the Senate? As common as gambling in Casablanca.''

Sixty votes is a threshold that Supreme Court nominees have met for the past quarter century. If a Supreme Court nominee cannot garner 60 votes in the Senate, then the President should put forward a new nominee.

We are at a unique moment in history. The President has already fired an Attorney General and had his unconstitutional Executive actions blocked by many Federal courts. The President, in the first few weeks, has also launched unprecedented attacks on the integrity of the Federal judiciary. And now the Federal Bureau of Investigation has confirmed it is investigating Russian involvement in his election.

A new bombshell is revealed almost every day.

In this context, the Senate cannot simply rubberstamp a lifetime Supreme Court appointment for the President. Neil Gorsuch is the man Donald Trump urgently wants on the Supreme Court. That should give many Americans pause. It certainly gives pause to me.

I cannot support the nomination of Neil Gorsuch. I will vote no when his nomination comes before the Judiciary Committee next week, I will vote no on cloture, and I will oppose his nomination on the Senate floor.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, the most solemn and serious and consequential act that the United States can undertake at any moment is to make the decision to send Americans into war. From time to time, war may be an unfortunate decision but a necessary decision—a necessary and potentially tragic function of any republic. And it might be necessitated by the need to safeguard the rights and the freedoms of the government's own citizens from foreign states—from those who would harm us. Yet we should enter into those wars and enter into any alliances that could lead to war only after utmost deliberation and strategic consideration, focusing specifically on the well-being of the American citizens—those people whom we are sworn to protect, those people whose safety is at stake whenever we go to war.

That is why, for the past several months, I have asked that the Senate have a rollcall vote on the measure to ratify Montenegro's accession to the North Atlantic Treaty, and that is why I will be casting my vote against expanding NATO later today.

Of course, treaties and alliances with other countries can be beneficial; there is no question about that. But the Founders of this country understood that their seriousness needs also to be considered—that the seriousness of a treaty needs to be taken into account in the same way that you have to consider very carefully the seriousness of going to war, and for the very same reasons. That is why both of these powers—the power to make and ratify treaties and the power to declare and execute war—are given not to one single branch of the Federal Government, but rather they are shared by the legislative and executive branches acting together. In addition to this, treaty ratification requires not just a majority vote, but a two-thirds supermajority vote within the Senate.

The United States should enter into treaties and alliances with foreign nations that will enhance the ability of American citizens to exercise their rights and freedoms and to safeguard those same people. At the heart of the NATO alliance is the article 5 guarantee for collective defense, stating, in essence, that an attack against any one NATO ally will be perceived and responded to as an attack against all. This means that the United States is obligated by treaty to make war because of an attack on an ally, and those allies are obligated to us for the same purpose and to the same extent. This, of course, is a very significant agreement. It is one that we should never take lightly. It is never one that we should just assume into existence any time we have a decision to make.

Simply put, I don't see how the accession of Montenegro—a country with a population smaller than most congressional districts and a military smaller than the police force of the District of Columbia—is beneficial enough that we should share an agreement for collective defense. Montenegro becoming a member of NATO is certainly attractive to European countries because it makes the United States the security guarantor of yet another country in a region prone to instability and ethnic unrest, but that doesn't automatically make it of interest to the American people. It doesn't automatically mean that the benefits outweigh any risks to the American people by bringing this country into NATO.

On the other hand, I believe the risks could outweigh the benefits to the detriment of the American people and result in more of our servicemembers being deployed overseas and at risk. The resolution of ratification on which the Senate is voting states that ''an attack against Montenegro, or its destabilization arising from external subversion, would threaten the security of Europe and jeopardize United States national security interests.''

This makes NATO responsible not only for external security but for combating destabilization in a historically volatile part of the world. Undertaking obligations like this only increases the likelihood of Americans being placed in harm's way, of our brave young service men and women having to go into a potential field of battle.

Further, expanding NATO does not address some of the systemic problems that U.S. administrations from both sides of the aisle have long pressed to their European counterparts: the failure of many NATO countries to meet decades-old defense spending obligations and the increasingly concerning behavior of some NATO members.

For example, several weeks ago it was announced that American military personnel are now being used in northern Syria for the purpose of preventing infighting between one of our NATO allies—Turkey—and our Kurdish allies in the coalition against ISIS. This was followed in short order by a diplomatic crisis between Turkey and the Netherlands—both NATO allies—in which the Turkish President accused the Dutch Government of fascism. European Commission President Jean-Claude Juncker in February rejected calls from the Trump administration, which were similar to pleas from the Obama administration, for European countries to increase their own defense spending in fulfillment of their existing obligations through NATO.

Addressing such issues is much more vital to the future of NATO and American interests in Europe than further rounds of expansion.

Finally, some of my colleagues have argued that we should move forward with Montenegro's accession into NATO because the Russians oppose it, just as the Russians have opposed all previous rounds of expansion. This is not the basis for a sound foreign policy. While the United States should not let another country have a veto over our national security decisions, it would be equally unwise for the United States simply to engage in certain actions just because geopolitical adversaries might oppose them. Such reactionary statecraft contradicts the ideals of prudence and practicality that our Founders hoped would guide our foreign policy.

On a more practical level, it still doesn't mean that we should just be willing to put our Armed Forces in a position where our brave young men and women might have to go into harm's way as a result of the fact that a geopolitical adversary takes the opposite viewpoint.

Further, elected officials should not have their patriotism or loyalty to country questioned because of their understandable concerns about national security, treaty obligations, and war. There are many thoughtful leaders and policy experts who have legitimate concerns—both, about Russia's behavior and about the direction of NATO—and who support meaningful pressure against Russia through economic and diplomatic means, as well as the modernization of our strategic deterrent and missile defense systems.

This vote, of course, is likely to pass and Montenegro will become the newest member of NATO this year. It is my sincere hope that the country will be a constructive force in addressing the operational and mission problems that I have described and that the Trump administration will press for needed reforms. But I also hope that American diplomatic leaders and Congress will work to identify and act on the security interests most relevant to the American people and think more strategically about our alliances and treaty partners in the future.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. President, I come to the floor today to talk about the importance of the Senate's vote to ratify the accession of Montenegro into the North Atlantic Treaty Organization, or NATO. I am confident we will see an overwhelming, bipartisan majority of our colleagues here in the Senate support Montenegro's effort to join NATO. This is in Montenegro's interest, it is in Europe's interest, and it is in the national security interest of the United States.

NATO is the most successful security alliance in history, and it is essential to the stability, freedom, and prosperity that Europe enjoys and that the United States has enjoyed, and, really, to that stability that has existed since after World War II. NATO has provided the security and stability for the freedoms we enjoy and the prosperity. Montenegro's accession to NATO will help the alliance become more resilient, and it will deter Russian aggression on Europe's eastern flank, which is why the alliance invited Montenegro to become its 29th member last year.

I agree that Montenegro is a small country, but it is geopolitically important. Its membership in NATO will complete the alliance's control of the Adriatic coastline, and that will strengthen NATO's southern border.

Since its independence from Serbia 10 years ago, Montenegro has pursued inclusion in Euro-Atlantic institutions, and it has been a good partner to NATO. For example, Montenegro has contributed ably to the mission in Afghanistan, which is the only time article 5 of NATO has been invoked. It was after the attacks of 9/11 on the United States, and our response was to go into Afghanistan. Montenegro joined us, along with our other NATO allies in this effort. Montenegro also imposed sanctions on Russia for its aggression in Ukraine.

Montenegro's accession to NATO is also critically important for the wider Balkan region, which faces increasing Russian influence and interference. After all, remember that the two major wars of the last century, World Wars I and II, started in the Balkans. We need to do everything we can to maintain stability there. This is one of the things that I believe Montenegro's accession to NATO will help us do. We saw the increasing Russian influence and the increasing effort to destabilize the Balkans last year in Montenegro's fall elections.

Since those elections, Montenegrin authorities have arrested several people in connection with a coup attempt and a plot to assassinate Montenegro's Prime Minister. There is indisputable evidence that ties both violent plots back to Russia, which was trying to eliminate a high-profile supporter of Montenegro's accession to NATO and install, instead, a pro-Kremlin political party there. Montenegrin police are still working with international authorities to locate the suspected Russian masterminds of these efforts.

But when the bipartisan codel from the Senate and House, led by Senators MCCAIN and WHITEHOUSE, went to the Munich Security Conference in February, we had a chance to meet with Montenegro's Prime Minister Djukanovic. He told us in very vivid detail about the efforts to assassinate him and about Russia's efforts to install instead a pro-Russian government. Do we really think that Mr. Putin, who desires nothing more than to weaken the NATO alliance, would work so hard to disrupt Montenegro's inclusion in NATO if he didn't think it would strengthen the alliance?

Approving Montenegro's accession to NATO would signal support for Montenegro's independence and sovereignty and for their continued efforts to move towards the West and away from Russia. It would also demonstrate our solidarity with countries like Montenegro that Vladimir Putin is trying to bully, especially in light of our own recent experience with Russian meddling in our Presidential election. Now is a critically important time to send Russia the message that we will not tolerate this behavior. Last fall, a bipartisan group of diplomats, national security experts, and former administration officials sent a letter to Congress urging quick action on Montenegro's accession.

Earlier this month, Secretary of State Rex Tillerson wrote a letter to Senator MCCONNELL and Senator SCHUMER detailing the reasons Montenegro's accession to NATO is in our interest and urging that we schedule a prompt floor vote on the accession. Virtually all NATO members have already formally blessed Montenegro's inclusion in the alliance. So it is just the United States that hasn't taken this important step forward.

The case for the Senate to support Montenegro's NATO accession is overwhelming. That is why it is so frustrating that it has taken so long. With Senator JOHNSON, I cochaired the Foreign Relations Committee hearing on this subject back in September of last year. In December and again in January, the Foreign Relations Committee approved Montenegro's accession protocol, and efforts were made to secure the necessary agreement for the full Senate to do the same. These efforts have been blocked by just a few Senators, despite the overwhelming bipartisan support for approval.

I am glad that Montenegro's accession is finally getting the vote in the Senate that it deserves. The United States has long stood for freedom and democracy in Europe, and I urge my Senate colleagues to stand strong for freedom and democracy now by voting to approve Montenegro's accession to NATO.

I yield the floor.

The PRESIDING OFFICER (Mr. CRUZ). The Senator from South Dakota.

NOMINATION OF NEIL GORSUCH

Mr. THUNE. Mr. President, last week the Senate Judiciary Committee held hearings on Judge Neil Gorsuch's nomination to the Supreme Court. Everything we heard from this nominee confirmed what has been clear from the beginning: Judge Gorsuch is the kind of judge all of us should want on the Nation's highest Court.

Judge Gorsuch obviously has a distinguished resume. He graduated with honors from Harvard Law School and went on to receive a doctorate in legal philosophy from Oxford University, where he was a Marshall scholar.

He clerked for two Supreme Court Justices—Byron White and Anthony Kennedy—and he worked in both private practice and at the Justice Department before being nominated to the Tenth Circuit Court of Appeals, where he has served with distinction for 10 years.

He is widely regarded as a brilliant and thoughtful jurist and a gifted writer whose opinions are known for their clarity. Most importantly, however, Judge Gorsuch understands the proper role of a judge, and that role is to interpret the law, not make the law; to judge, not legislate; to call balls and strikes, not to rewrite the rules of the game.

It is great to have strong opinions. It is great to have sympathy for causes or organizations. It is great to have plans for fixing society's problems, but none of those things has any business influencing your ruling when you sit on the bench. Your job as a judge is to apply

the law as it is written—and here is the fundamental thing—even when you disagree with it.

''A judge who likes every outcome he reaches is very likely a bad judge,'' Judge Gorsuch said more than once. Why? Because a judge who likes every outcome he reaches is likely making decisions based on something other than the law. That is a problem. Equal justice under the law, equal protection under the law—these principles become meaningless when judges step outside of their role and start changing the meaning of the law to suit their feelings about a case or their personal opinions.

Judge Gorsuch's nomination has attracted support from both sides of the political spectrum. I think the main reason for that is because both liberals and conservatives know they can trust Judge Gorsuch to rule based on the plain text of the law, irrespective of his personal opinions. Here is what Neal Katyal, an Acting Solicitor General for President Obama, had to say about Judge Gorsuch:

I have no doubt that if confirmed, Judge Gorsuch will help to restore confidence in the rule of law. His years on the bench reveal a commitment to judicial independence—a record that should give the American people confidence that he will not compromise principle to favor the President who appointed him.

The Colorado Springs Gazette recently highlighted a letter signed by 96 prominent Colorado lawyers and judges and sent to the senior Senator from Colorado. Here is what those individuals had to say about Judge Gorsuch:

We hold a diverse set of political views as Republicans, Democrats, and Independents. Many of us have been critical of actions taken by President Trump. Nonetheless, we all agree that Judge Gorsuch is exceptionally well qualified to join the Supreme Court. We know Judge Gorsuch to be a person of utmost character. He is fair, decent, and honest, both as a judge and a person. His record shows that he believes strongly in the independence of the judiciary.

A former law partner and friend of Judge Gorsuch—a friend who describes himself as ''a longtime supporter of Democratic candidates and progressive causes''—had this to say about the judge:

Gorsuch's approach to resolving legal problems as a lawyer and a judge embodies a reverence for our country's values and legal system. The facts developed in a case matter to him; the legal rules established by legislatures and through precedent deserve deep respect; and the importance of treating litigants, counsel and colleagues with civility is deeply engrained in him. . . .

I have no doubt that I will disagree with some decisions that Gorsuch might render as a Supreme Court Justice. Yet, my hope is to have Justices on the bench such as Gorsuch . . . who approach cases with fairness and intellectual rigor, and who care about precedent and the limits of their roles as judges.

Again, that is from a self-described ''longtime supporter of Democratic candidates and progressive causes.''

During his years on the bench, Judge Gorsuch has had a number of law clerks. On February 14, every one of Judge Gorsuch's former clerks, except for two currently clerking at the Supreme Court, sent a letter on his nomination to the chairman and ranking member of the Senate Judiciary Committee. Here is what they had to say:

Our political views span the spectrum . . . but we are united in our view that Judge Gorsuch is an extraordinary judge. . . . Throughout his career, Judge Gorsuch has devoted himself to the rule of law. He believes firmly that the role of the judge in our democracy is to apply the laws made by the political branches—that is, to adhere to our Constitution and statutes our elected representatives have enacted, and not to confuse those things with a judge's own policy preferences.

As law clerks who have worked at his side, we know that Judge Gorsuch never resolves a case by the light of his personal view of what the law should be. Nor does he ever bend the law to reach a particular result he desires.

For Judge Gorsuch, a judge's task is not to usurp the legislature's role; it is to find and apply the law as written. That conviction, rooted in his respect for the separation of powers, makes him an exemplary candidate to serve on the nation's highest court.

That is the unanimous opinion of 39 of Judge Gorsuch's former law clerks, whose political views in their own words ''span the spectrum.'' Unfortunately, no amount of testimony in favor of Judge Gorsuch will ever be enough for some Senate Democrats.

The Senate minority leader took to the floor last week to announce a determination to oppose Judge Gorsuch's nomination. He also announced his determination to push for a filibuster of Judge Gorsuch's nomination. The minority leader's reasons? Well, for starters, the minority leader apparently doesn't trust that Judge Gorsuch will use the bench to implement the leader's preferred policies. He disagrees with some of Judge Gorsuch's decisions, and he apparently considers that sufficient grounds to bar Judge Gorsuch from the Supreme Court. The minority leader demonstrated little interest in whether Judge Gorsuch's legal interpretations were correct. For the minority leader, judging is about getting one's preferred outcome, irrespective of what the law actually says.

The minority leader also mentioned another reason for opposing Judge Gorsuch: He doesn't trust the judge to be independent or impartial, even though liberals and conservatives alike have praised Judge Gorsuch's independence and impartiality as two of his defining characteristics.

The minority leader also made the laughable claim that Judge Gorsuch is somehow out of the judicial mainstream. Well, let me quote what the Wall Street Journal said on this subject. In February, the Journal wrote:

Judge Gorsuch has written some 800 opinions since joining the Tenth Circuit Court of Appeals in 2006. Only 1.75 percent (14 opinions) [out of 800] drew dissent from his colleagues. That makes 98 percent of his opinions unanimous even on a circuit where seven of the 12 active judges were appointed by Democratic Presidents and five by Republicans.

Let me repeat that last line: ''That makes 98 percent of his opinions unanimous even on a circuit where seven of the 12 active judges were appointed by Democratic Presidents and five by Republicans.''

Well, I wonder if the minority leader intended to suggest that the entire Tenth Circuit is composed of extremist judges or that all of the judges on the Tenth Circuit lacked impartiality or independence, because, logically speaking, if you are going to suggest that Judge Gorsuch is an extremist, then you would have to argue that his colleagues who agreed with his opinions 98 percent of the time are extremists too.

The truth is, Democrat opposition to Judge Gorsuch has zero to do with whether Judge Gorsuch meets the qualifications of a Supreme Court Justice. It is obvious that the judge has all the qualifications one could want in a Justice. Democrats are opposing Judge Gorsuch because they are mad. They are mad that their party didn't win the Presidential election, they are mad that their party doesn't have control of Congress, and they are mad that they are having to consider a judge nominated by a Republican President. It doesn't matter how qualified Judge Gorsuch is, how impartial he is, how independent he is, some Democrats are just going to oppose him anyway.

This isn't the first time Judge Gorsuch has been before this body. Back in 2006, the Senate considered Judge Gorsuch's nomination to the Tenth Circuit. At that time, the judge's nomination sailed through the Senate. Both of his home State Senators—one a Republican and one a Democrat—supported his nomination, and he was confirmed by unanimous vote. Then-Senator Obama could have objected to the nomination, but he didn't. The current minority leader, who was serving in the Senate at that time, could have objected to the nomination, but he didn't. Senators Biden or Clinton could have objected to the nomination, but they didn't. Why? Presumably because they saw what almost everybody sees today: that Judge Gorsuch is exactly the kind of judge we want on the bench—supremely qualified, thoughtful, fair, and impartial. It is incredibly disappointing that some Democrats are now planning to oppose this eminently qualified Supreme Court nominee simply because they can't deal with losing an election.

The Senate has a 230-year tradition of approving Supreme Court nominees by a simple majority vote. There has never been a successful partisan filibuster of a Supreme Court nominee in 230 years, and the only ones who have ever attempted one are the Democrats. Well, some Democrats may follow the minority leader in opposing Judge Gorsuch. I am hopeful that others will listen to the many voices, liberal and conservative, speaking out in support of his nomination.

There is no good reason to oppose Judge Gorsuch, and there is every reason to support him. It is time to confirm the supremely qualified judge to the Supreme Court.

Mr. President, I yield the floor.

(Disturbance in the Visitors' Galleries.)

The PRESIDING OFFICER. Expressions of approval will not be permitted by the gallery.

The Senator from Minnesota.

BROADBAND CONSUMER PRIVACY

Mr. FRANKEN. Mr. President, I rise today to talk about the effort by my Republican colleagues to gut critical consumer privacy protections. Last week, the Senate voted 50 to 48 to allow internet service providers such as Comcast, Verizon, and AT&T to freely collect, share, and sell its customers' private information. Later today, the House will vote on the same measure.

Let's be clear what we are talking about here. From web browsing histories to app usage information, broadband providers have easy access to a whole lot of Americans' personal information. Comcast knows exactly what ails you when you visit WebMD's Symptom Checker or that you have recently experienced a major life event when you are browsing maternity clothes on target.com. They would like the ability to use or sell this information to target advertising toward you, and they would really like to use or sell this information without first having to ask your permission.

Now, for me, the interests of consumers in Minnesota, Texas, and across our country have always come before those of big corporations. That is why I have long championed an internet that is open, accessible, and protects Americans' fundamental rights to privacy. For most Americans, I don't think those are controversial ideas.

For example, I suggest that most if not all of us in the Senate believe in the importance of ensuring that Americans have access to affordable high-speed internet. It is one of those great issues on which Members on both sides of the aisle can agree. See, we all know that Americans' cable and broadband bills are too high. The Consumer Federation of America recently reported that the average American household spends about $2,700 a year for phone, TV, and Internet services. That is why it is so disappointing that instead of acting to make broadband more affordable and more accessible for Americans, my Republican colleagues have actually paved the way for multibillion-dollar companies to make even more money off of their consumers by monetizing some of the most intimate details of their lives. Make no mistake about it, this is purely and simply a corporate handout at the expense of Americans' privacy.

When the FCC voted to pass the broadband privacy rules, the broadband industry was quick to oppose and oppose loudly. In recent months, internet service providers have used their vast resources to lobby the FCC and my fellow lawmakers. If House Republicans heed their call, as my colleagues in the Senate have done, companies like Comcast, Verizon, and AT&T will be free to sell their customers' personal information to the highest bidder, and importantly, they will do so without the oversight or regulation of either the Federal Communications Commission or the Federal Trade Commission.

For my part, I have long held that Americans have a fundamental right to privacy. We deserve both transparency and accountability from companies that have the capacity to trade on their private information. Should some people choose to leave their personal information in the hands of those companies, they certainly deserve to know that their information is being safeguarded to the greatest degree possible. I am going to keep fighting on behalf of consumers in Minnesota and across the country to secure these rights because I work for them and not the broadband industry.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. CORKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NUCLEAR OPTION

Mr. CORKER. Mr. President, we find ourselves at an interesting point. Let me start by saying what a tremendous privilege it is to serve in this body. Every single day that I come to the building from where I live, I express that to myself—what a tremendous privilege it is for all of us to serve in this body, denoted by many as the greatest deliberative body in the world. Certainly, we find ourselves here in a place where we can effect so many things that not only affect our citizens but citizens across the world. What a privilege that is.

The Presiding Officer and I have had numerous conversations in the past. I spent a life in business before coming to the Senate, and I know the Presiding Officer did a lot of unique things as well. At the age of 25, I was fortunate enough to build a business, starting with a small amount of money. It ended up operating all around the country. One of the things we did after every project—I built shopping centers around the country—is that we would get together and analyze the things we had done well and the things we had done not so well in an effort to become better. At the end of each year, we would sit down and look at our company, which was growing very rapidly, and try to analyze those things. Sometimes we would have setbacks, but generally speaking, the company continued to operate on an upward trend.

What I find here is just the opposite. I have been here now a decade, and what we do is just the opposite of that. What we do is we continue a downward trend because the way the two parties operate with each other is when it gets to a point where there is something very critical that has to happen, the other side says, well, if they were in power, this is what they would do, so let's go ahead and do this ourselves. So what we have in the Senate, at least since I have been here in the last decade, is instead of an escalating situation where we continue to operate better and deal with these things in a more balanced way, what we do is we are on this continual downward trend.

One of our younger Members mentioned the other day as we were discussing this—and I thought it was a great point—that what has happened in the Senate is that neither party has had the ability to withstand the pressure that is brought to them by their base in either party.

I have seen that play out right now. What happens is their base puts pressure on, and we end up breaking the traditions of the Senate. We did it legislatively with the cloture vote being the scored vote by outside groups. So that is where we find ourselves.

What is happening in our own caucus—I just realized over the weekend—is that we are now trying to figure out whom to blame. I heard a discussion last Wednesday that was totally divorced from reality as far as how we had gotten where we are today. I realized that we are getting ready to do some things here that will change the Senate dramatically. What is really happening is that both sides are trying to make sure history records that it was the other side that caused this to happen.

We are now starting to see editorials in various publications—some that we Republicans read and some that Democrats read—to try to set the story straight. I about came out of my chair last Wednesday with regard to one of the explanations as to how we got where we are today. My guess is, today at lunch on the other side of the aisle, the same thing will be taking place. Obviously, on our side, it is the other side. On their side, it is our side.

Let me go back to 2013. We had a breakdown taking place. President Obama was bringing forth some nominations, and it was right after he was elected for a second term. We went through the summer of 2013 with some of his nominees not getting cloture votes. I was called, as were a few other Senators, to make what we would call some tough votes. These were nominees whom we did not support. Cloture had again become the vote that people were scoring, but I and JOHN MCCAIN and LAMAR ALEXANDER and a few others were asked to make some votes that, candidly, were not very pleasant to keep us from getting to a place at which Senator Reid would impose the nuclear option.

We made it through the summer, and we went into the fall. We had just confirmed a new circuit court judge for the

DC Circuit, which is just below the Supreme Court relative to importance for lots of reasons. So we had a 4-to-4 balance on this circuit court. Senator Reid brought forth three more nominees, and they were not bad nominees. I think most people thought they were actually pretty decent nominees. But we did not want the balance of the DC Circuit to change; it was at 4-to-4.

We know that a lot of administrative rulings that are relative to the administration take place in the DC court, so we made the argument that there were already enough judges there and that they did not have a very good case. It was the same argument, by the way, that Democrats made back in 2006 when Bush was also trying to make some nominations. We do the same to each other. So we ended up filibustering those three nominees.

What we thought was going to take place was a negotiation on how many judges would actually go when all of a sudden Senator Reid, out of the blue, with some of his Members not realizing what had happened, did the nuclear option. He ruled and called upon the person sitting in the Chair and the Parliamentarian. All of a sudden, we destroyed what had been the case of it taking 60 votes to move beyond to an actual vote on the nominee. I was livid.

Somebody said the other day that that was fine and that we had just gotten to where we had wanted to be. Are you kidding me? We were livid. We were livid that on some circuit court nominees, Senator Reid had pulled the nuclear option.

I will tell you this: There were days—not days, months—where people who had normally worked with people on the other side of the aisle just kind of shut down. It was hard to believe the nuclear option had been invoked.

Last Wednesday, somebody acted like it was no big deal, that it had just gotten us back to where we had always been. The fact is that we have not used filibusters much—years ago. The fact is that we are using them a lot today. Look, this was a big deal.

Now we find ourselves in a situation in which we are getting ready to take the last step, if you will, on nominations. Let's face it: We have a nominee in this judge who is on the floor who is really beyond reproach.

I realize my friends on the other side of the aisle have pressures. I have talked to some of them, and I respect them. I understand that their base is saying that because of what we did last year. Remember, it had been an hour since the great Justice passed away, and we had already declared we were not going to allow another Justice to be confirmed until after the Presidential race. It was a pretty audacious move, let's face it, and obviously it created some hard feelings on the other side of the aisle after the election was determined.

Within their base, many of them are saying they are going to invoke the filibuster here. Our leadership is saying: If that happens, then we ourselves have to invoke the nuclear option on the Supreme Court Justice.

We understand where this is going. I do not know what has been said on the floor other than during the hearings, but let's face it: One side is reacting to their base, to their pressure. They are having ads run against them if they are even considering voting to move beyond the cloture vote to an actual vote on the nominee. On our side, obviously, we are in a situation in which, if that happens, then our leader is going to call the nuclear option.

By the way, everybody says: Oh, we are never going to do it on legislation. Come on. Let me go back to that for a minute.

Back in 2010, the Democrats passed a healthcare bill with 60 votes. Then there was an election, and it took them down below 60 votes. They just needed to fix a little element on the healthcare bill with a reconciliation bill, and the Republicans went crazy over that. How many times have we talked about their passing this healthcare bill with reconciliation? It has been going on for 7 years. Now we are in the driver's seat. We have the majority. We are writing an entire bill through reconciliation because we understand the power of being able to do something with 51 votes. I understand. So what we do is we just keep upping the ante with each other. Are you kidding me?

If we continue on the path we are on right now, the very next time there is a legislative proposal that one side of the aisle feels is so important, they cannot let their base down, the pressure builds, then we are going to invoke the nuclear option on a legislative piece. That is what will happen. Somebody will do it. Somebody will say that if they were in control, they would do it. That is the way trust has gotten around here. So we ought to do it because this is our opportunity to really change history.

Look, I hope that before we move to the place that we all know we are going—I do not think anybody here would deny that pressures have built. Let's face it. If we do not have respect for the institution we serve and for ourselves, no one else will. Who will? These people know what we are getting ready to do to this place. For us to act like if we do it here, there is no way we would ever do it on a legislative piece—let me tell you this: Two years ago, after Senator Reid did what he did—a friend of mine and somebody I worked very closely with, I think most people know it took me a while to get back to normal with him. Two years ago, there would not have been a single Republican in our caucus who would have even considered voting for the nuclear option. As a matter of fact, we had discussions about changing it back. Then the election occurred, and we decided not to do that.

What it looks like to me is that there is a whole host of Republican Senators who are willing to do that today. Everyone knows that on the other side of the aisle—maybe everyone; I don't know. Yet to say that we will never get to the point at which we will not change a legislative piece—give me a break. Somebody is not living in reality, because we each continue to take the other down.

Again, I do not really care how history writes it; I am going to tell you how I am going to write it. Neither side of the aisle has had the maturity or the willingness to stand up to the pressures and cause this institution to operate in the way it should—neither side of the aisle. As for anybody who tries to say that one side of the aisle is worse than the other, come on. It takes two of us to take the institution to the place at which we are getting ready to take it next week. That is my history. I have been here 10 years. I have watched it. Neither side of the aisle has clean hands. We have one side. They have a decision to make. Are they really going to filibuster this judge? Let's face it. If you go back and look at the principles of the Gang of 14 that were put in place back in the 2000s, when both sides came together and said: We are not going to do the nuclear option as long as a judge meets these criteria—this judge meets that criteria. It is clear. By the way, I am not criticizing; I am just observing.

We both have pressures. We know that if a filibuster takes place—and you will know that immediately; of course, it would be after a few filibuster votes just to show that it cannot happen—the leader on this side is going to invoke the nuclear option. You all know that. I do not know if people are saying that it could happen, but of course that is what is going to happen. And then the very next time another big legislative issue comes up, the same thing is going to happen unless we have the ability to sit down and talk about this. I would love to do it out on the floor. Typically, we do not do those kinds of things because things get out of control when we talk about things honestly here on the floor, but I would like for us to do that. I would love for us to have maybe a 4-hour discussion about what we are getting ready to do here in the Senate. To me, that would be a healthy thing.

I think all of these staffers who work up here, whom we respect, know exactly what is getting ready to happen here in the Senate.

I think we owe this to people who are getting ready to run for the Senate or maybe to people who are thinking about running for reelection. We should go ahead and have this discussion so that they will know whether they are running for a 6-year House term—a 6-year House term because we do not have the maturity, because we do not trust each other, because we are on this constantly deescalating deal and our leaders do not talk to each other and fight and all of those kinds of things happen, because we are getting ready to take this institution to a

place that I do not think many of us are going to be proud of. But, again, for the people who are thinking about running for the Senate, let's go ahead and clear it. Let's have a discussion about this legislative issue so that people will know, if they are seeking election to the U.S. Senate, that they are, in essence, going to sign up, possibly, for a 6-year House term.

I am at a place in my Senate life where I have tremendous respect for the people with whom I have served. Every day I come here, I look at the things I have the ability to affect as one Senator. I look at that with such honor, to be able to be in a body that debates these kinds of things and affects people in the way we do. What an honor it is to be here. I am here with no malice.

I am here, though, at a time when I see what is getting ready to happen without a lot of discussion, and I hope that somehow or another, we will have the ability to avoid what I see as something that is very, very detrimental to the Senate and, in the process, very detrimental to our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. GARDNER. Mr. President, I understand there is a time agreement on the recess before lunch.

I ask unanimous consent that I be allowed to finish and complete my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF NEIL GORSUCH

Mr. GARDNER. Mr. President, I wanted to come to the floor again to express my strong support for a very mainstream, well-qualified nominee for the Supreme Court, Judge Neil Gorsuch.

Last week, this country got to watch the Senate Judiciary Committee carry out days of hearings that questioned and probed Judge Gorsuch's legal approach, that questioned his temperament to the bench, his suitability to be on our Nation's High Court. I believe every member of the Senate Judiciary Committee had at least an hour to question Judge Gorsuch, to provide lengthy opening statements, to have an extended period of time to have a back-and-forth with Judge Gorsuch in order to go over his judicial philosophy—his approach—that he would take with him from the Tenth Circuit Court to the Nation's High Court.

A number of interest groups and personal witnesses were talking about whether or not they believe Judge Gorsuch is qualified for the bench, and some were highly favorable and spoke very highly of him, and others opposed his confirmation. That is what is great about this country—to be able to come before our Congress, our government, and to testify for or against somebody who will be in that third important branch of government, the judicial branch. It is incredibly inspiring to watch this process unfold. There were student groups around the country, classes and teachers, who were watching the confirmation hearing as a project, as an educational experience, as a lesson in civics, democracy, and government.

I mentioned, of course, that Judge Gorsuch is a judge on the Tenth Circuit Court today. He is a fourth generation Coloradan. He was confirmed to that position in 2006, 11 years ago, unanimously. He was confirmed to the Tenth Circuit Court 11 years ago unanimously. Based on some of the comments we have heard opposing Judge Gorsuch, it is hard to believe that anybody would have supported him unanimously 11 years ago—based on the things we have heard from the other side of the aisle about him. Judge Gorsuch was confirmed unanimously by 12 current Democratic Senators who did not oppose his confirmation 11 years ago and who serve in this body today.

Twelve Democratic Senators serve in this Chamber today who agreed with his confirmation or didn't oppose his confirmation 11 years ago. In fact, not a single Democrat opposed his nomination—not a single one, and his nomination was unanimous—not Minority Leader SCHUMER, not Senator LEAHY, not Senator FEINSTEIN, not Senator DURBIN, not Senator CANTWELL, not Senator CARPER, not Senator MENENDEZ, not Senator MURRAY, not Senator NELSON, not Senator Reid, not Senator STABENOW, and not Senator WYDEN. Judge Gorsuch's nomination also was not opposed by then-Senator Barack Obama. It was not opposed by then-Senator Joe Biden, and it was not opposed by then-Senator Hillary Clinton.

This level of support for the other party's nomination is almost unheard of in today's political climate. But now, these very same colleagues are vowing to break 230 years of Senate tradition, to dispense with 230 years of precedent, and to join a partisan filibuster of a nominee who has the right judicial temperament and holds mainstream views that are supported by the Constitution.

Throughout the confirmation hearing process, we heard Judge Gorsuch talk about the over 2,000 opinions that he was a part of—2,700 decisions that he was a part of—and I believe he testified before the committee that he joined in the majority in 97 percent of those opinions. That is somebody who sounds to me like the person who could have received the unanimous support of the Senate—who did receive the unanimous support of the Senate, including colleagues who serve with us today.

But, unfortunately, across the aisle, we still haven't heard a reason articulated—a compelling rationale—for why this supremely qualified nominee should be opposed. Sometimes they will reference a letter from a law student at the University of Colorado, or perhaps they will find one case out of the 2,700 cases that tugs at the heartstrings but not at the law and try to hang their hat on that decision as to why they should oppose Judge Gorsuch. To use a baseball analogy, it is a little bit like a batting average. You would think that a professional baseball player that had a 400 batting average was a pretty doggone good baseball player, but that would mean they missed the ball a heck of a lot much of the time. It seems to me the argument they are making with Judge Gorsuch is that unless he had a perfect batting average and never missed a single pitch and had a hit every single time—that is the standard, apparently, that our colleagues are looking for. It is a standard that no one has ever met in this country before.

We are looking for mainstream judges with the right temperament and the right philosophy, and that is what Judge Gorsuch has proven time and again in the Tenth Circuit Court—that temperament that we need on the highest Court.

Our colleagues on the other side of the aisle should abandon their threats of a filibuster and allow an up-or-down vote to occur for Judge Gorsuch. It is what Senate tradition and precedent requires.

Today, though, I thought it important to talk about Judge Gorsuch's exceptionally strong record on religious liberty. Judge Gorsuch is perhaps widely known for his participation in the Tenth Circuit's Hobby Lobby case, a decision which involved the protections afforded by the Religious Freedom and Restoration Act and which was ultimately affirmed by the Supreme Court. In his concurrence, Judge Gorsuch made a number of telling pronouncements regarding religious liberty. Regarding the case, he wrote that the law in question requires the owners of Hobby Lobby to ''violate their religious faith by forcing them to lend an impermissible degree of assistance to conduct their religion teaches to be gravely wrong.''

Let me say that again. In Hobby Lobby, Judge Gorsuch wrote that the law requires the owners of Hobby Lobby to ''violate their religious faith by forcing them to lend an impermissible degree of assistance to conduct their religion teaches to be gravely wrong.''

In determining which religious beliefs are entitled to protection, Judge Gorsuch said it doesn't matter if the beliefs are contestable or even offensive. It only matters if they are sincerely held—if they are sincerely held.

He went on to stress that ''it is not the place of courts of law to question the correctness or the consistency of tenets of religious faith, only to protect the exercise of faith.''

It is these same constitutional principles of religious liberty that Judge Gorsuch has also used to protect religious minorities and prison inmates.

In Yellowbear v. Lampert, Judge Gorsuch ruled that a Native American prisoner was entitled to the use of a prison sweat lodge under Federal law.

Judge Gorsuch went on to stress that while prisoners give up many liberties, the freedom to sincerely express their religion is not one of them. His reasoning was later adopted by the Supreme Court to extend similar religious liberty protections to a Muslim prisoner. Judge Sotomayor even quoted the opinion of Judge Gorsuch in her concurrence in that case.

From his opinions, it is clear that Judge Gorsuch is a mainstream nominee who understands the importance of putting personal beliefs aside and applying the law as written. This is why George Washington University Law School professor Jonathan Turley argued that Judge Gorsuch shouldn't be penalized for his past opinions. As he said, ''the jurisprudence reflect, not surprisingly, a jurist who crafts his decisions very close to the text of a statute and, in my view, that is no vice for a federal judge.''

It is for the reasons I have cited today and for the reasons we have seen over the past week that I am certain Judge Gorsuch will make Colorado proud and that his decisions will have a positive impact on the Supreme Court and this country for generations to come.

I look forward to working with my distinguished colleagues on both sides of the aisle to expeditiously confirm his nomination and to make sure that we uphold the best traditions and the precedent of this Senate.

Mr. President, thank you.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

PROTOCOL TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF MONTENEGRO—Continued

The PRESIDING OFFICER. The Senator from Arizona.

(The remarks of Mr. FLAKE pertaining to the introduction of S. 745 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FLAKE. Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SASSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RUSSIA

Mr. SASSE. Mr. President, I rise to comment briefly on Russian interference in the electoral processes in this country and across the West and governments of many of Russia's own neighbors.

We are in the middle of a civilization warfare crisis of public trust in this country. This isn't about the last 2 months. This isn't just about the last Presidential election. This is fundamentally about the last few decades of declining public trust in a broad range of our institutions: the press, political parties, executive branch agencies, the Congress, and beyond.

Russia is not unaware of our own distrust of each other. Russia is not unaware of our own increasing self-doubt about our shared values. Russia is today very self-consciously working to further erode confidence in our self-government by pulling at the threads of our public and civic life. Moscow's influence campaigns don't start by creating wholly new problems out of thin air, but rather by exploiting fissures that already exist in our civilization. The simplest way for Russia to try to weaken us is by trying to exploit the places where we are already weak, the places where we are already distrustful, and the places where we are failing to pass along a shared understanding of American values to the next generation.

The sad state of modern politics and the explosion of digital media are proving to be ripe targets for many of our own internal doubts and our own discord. We—all of us, Republicans and Democrats, the legislature and the executive branch—are ill-prepared for the challenges that are already on our doorstep, let alone what comes next with the acceleration of these kinds of technologies.

Today in the Wall Street Journal, we in this body were rebuked—rightly rebuked, I think, and rebuked in a bipartisan way by former Congressman MIKE ROGERS. Chairman ROGERS, a Republican, served as the Chairman of the House Intelligence Committee from 2011 through 2015. I am going to read his op-ed rebuke into the RECORD today, but I would humbly ask that all 100 Members of this body calmly and self-critically consider carefully Chairman ROGERS' argument, for his argument is not fundamentally against Republicans alone. It is not against Democrats alone. He is offering double-barreled criticism of all of us in the Congress—criticism of both parties. Why of both parties? Because Russia's influence campaign is a really big deal. Are we Republicans listening? Also, because our response to Russia's influence campaign is not primarily about who you supported last November in the Presidential election.

Listening to the Democrats, it is sometimes hard to understand if that side of the aisle remembers that basic fact about what Russia's influence campaign was up to. Russia's goals in our most recent election were not initially about one candidate versus another candidate. We need to underscore this. There are particulars that those of us who spend time reading classified intelligence know we can't discuss in this unclassified setting. But the big, broad point is simple and needs to be shouted, and that is that Putin's fundamental goals are about undermining NATO. Putin's fundamental goals are about making us doubt our own values: freedom of speech, freedom of religion, freedom of the press, freedom of assembly, the right of protest or redress of grievances.

The Kremlin isn't attempting an influence campaign to make Americans believe that the sky is green or the grass is blue. He is trying to undertake an influence campaign to make us doubt our own First Amendment values. The Kremlin wants us to believe that our society is as corrupt as the thugocracy that Putin and his cronies are trying to advance. That isn't true, but if you listen to us in this body, we regularly do very little to restore the kind of public trust that Putin is actively working to undermine.

So I ask that each Member of this body would humbly and carefully consider Chairman ROGERS' rebuke to the Congress this morning. This is from the Wall Street Journal, Chairman ROGERS; headline: ''America is Ill-Prepared to Counter Russia's Information Warfare.''

When historians look back at the 2016 election, they will likely determine that it represented one of the most successful information operation campaigns ever conducted. A foreign power, through the targeted application of cyber tools to influence America's electoral process, was able to cast doubt on the election's legitimacy, engender doubts about the victor's fitness for office, tarnish the outcome of the vote, and frustrate the new President's agenda.

Historians will also see a feckless Congress—both Democrats and Republicans—that focused on playing partisan ''gotcha'' and fundamentally failed in its duty to gather information, hold officials accountable, and ultimately serve our country's interests.

Whether or not the Trump campaign or its staff were complicit in Moscow's meddling is missing the broader point: Russia's intervention has affected how Americans now view the peaceful transition of power from one president to the next. About this we should not be surprised. Far from it.

Propaganda is perhaps the second- or third-oldest profession. Using information as a tool to affect outcomes is as old as politics. Propaganda was familiar to the ancient Greeks and Romans, the Byzantines, and the Han Dynasty. Each generation applies the technology of the day in trying to influence an adversary's people.

What's new today is the reach of social media, the anonymity of the internet, and the speed in which falsehoods and fabrications can propagate. Twitter averaged 319 million monthly users in the fourth quarter of 2016. Instagram had 600 million accounts at the end of last year. Facebook's monthly active users total 1.86 billion—a quarter of the global population. Yet each of these staggering figures doesn't fully capture the internet's reach.

In February, Russia's minister of defense, Sergey Shoigu, announced a realignment in its cyber and digital assets. ''We have information troops who are much more effective and stronger than the former 'counter-propaganda' section,'' Mr. Shoigu said, according